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8 UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10

11 N.F., a minor, by and)	CASE NO.
through his Guardian Ad)	
12 MELANIE FLYTE,)	COMPLAINT FOR REVERSAL OF
)	ADMINISTRATIVE ORDER
13 Plaintiff,)	DISMISSING PLAINTIFF'S
)	DUE PROCESS COMPLAINT
14 v.)	
)	
15 ANTIOCH UNIFIED SCHOOL)	
DISTRICT, A Local)	
16 Educational Agency,)	
)	
17 Defendant.)	
_____)	

18
19 Plaintiff N.F. alleges as follows:

20 **JURISDICTION AND VENUE**

21 1. This Court has original jurisdiction of this
22 action under 20 U.S.C. § 1415(g), and 28 U.S.C. §§
23 1331 and 1343. This action is brought pursuant to,
24 pursuant to the Individuals with Disabilities
25 Education Act ("IDEA").

26 **THE PARTIES**

27 2. Plaintiff N.F., a minor, is a student with a
28 disability who, at all times relevant to this

1 complaint, has resided within the attendance
2 boundaries of Antioch Unified School District ("AUSD")
3 and was eligible for special education services
4 pursuant to the IDEA and State law.

5 3. Defendant ANTIOCH UNIFIED SCHOOL DISTRICT
6 ("AUSD") is, and at all times herein mentioned was a
7 school district duly organized and existing under the
8 laws of the State of California as a local educational
9 agency ("LEA"). At all times relevant to this matter,
10 including the period of time that N.F. attended a
11 public charter school, AUSD remained N.F.'s "District
12 of Residence" and bore the responsibility for the
13 provision of a free and appropriate public education
14 ("FAPE") to N.F.; AUSD, as the District of Residence,
15 has had the duty to comply with all mandates of the
16 IDEA and related State law.

17 **COMPLAINT**

18 4. Plaintiff was the Petitioner in a due process
19 hearing complaint filed with the California Office of
20 Administrative Hearings ("OAH"), OAH Case No.
21 2020020567. His issues raised in that matter were:

- 22 1) Whether AUSD, as the District of Residence
23 for N.F., was required to convene an IEP
24 team meeting and to make an offer of free
25 appropriate public education to him and
his parents from February 2018 forward,
for the 2018-19 school year, and for the
2019-20 school year;
- 26 2) Whether AUSD should have given simple
27 information to N.F.'s parents regarding
his proposed placement in April 2018;

1 3) Whether AUSD denied the parents meaningful
2 participation in the IEP process when it
3 failed to hold an IEP and identify and
 offer FAPE to N.F. from February 2018
 forward;

4 4) Whether AUSD timely responded to the
5 parents' request on several occasions
6 from March 2018 forward, for AUSD to hold
7 an IEP team meeting to discuss N.F.'s
8 needs, goals, services, and placement, and
 whether any delay denied the parents
 meaningful participation in N.F.'s IEP
 process;

9 5) Whether AUSD has denied N.F. and his
10 parents rights under Section 504, ADA,
 and State civil rights laws.

11 5. AUSD moved to dismiss Plaintiff's due process
12 complaint, alleging that it had no duties to N.F. even
13 though it was his "District of Residence." On March
14 12, 2020, OAH issued an Order Granting Motion to
15 Dismiss, finding that AUSD was "not a proper party to
16 this action as it is not the LEA responsible for
17 providing Student a FAPE so long as Student is
18 enrolled in CAVA." (A copy of that Order is attached
19 hereto as Exhibit 1)

20 6. The OAH administrative law judge ("ALJ")
21 failed to consider and apply federal law regarding
22 public charter schools, specifically, 34 C.F.R. § 130
23 and 34 C.F.R. § 300.36. Those regulations identify a
24 public charter school as one of the parentally placed
25 private school placements for students with disabili-
26 ties. Nothing in State law or IDEA relieves AUSD of
27 its duty - as N.F.'s District of Residence - to hold
28 an IEP for N.F. and to offer him a free appropriate

1 public education or "FAPE".

2 7. The OAH ALJ also overlooked the fact that
3 N.F.'s parents had placed N.F. at CAVA and made a
4 written request to AUSD for an IEP and FAPE offer.
5 Under clear precedent, a parent may place his child in
6 a private placement, including a public charter
7 school, and seek an order of FAPE from the child's
8 District of Residence.

9 8. Following the OAH Order dismissing Plaintiff's
10 due process complaint, Plaintiff timely filed a Motion
11 for Reconsideration. That motion was denied on March
12 25, 2020, and a copy of that Order Denying Motion for
13 Reconsideration is attached hereto as Exhibit 2.

14 9. In an attempt to resolve the issue of OAH's
15 dismissal, Plaintiff filed a complaint with the State
16 Department of Education, Procedural Safeguards Unit.
17 That complaint was filed on April 13, 2020, and the
18 California Department of Education has yet to respond
19 - in any way - to Plaintiff's complaint.

20 10. Plaintiff now timely files his District Court
21 complaint to reverse the OAH Order Denying his Motion
22 for Reconsideration of the OAH Order Dismissing his
23 due process complaint.

24 **FIRST CAUSE OF ACTION**

25 **For Reversal of OAH Order to Dismiss**

26 11. Plaintiff incorporates by reference each and
27 every allegation of Paragraphs 1 through 10 of the
28 Complaint as though fully set forth herein.

1 12. N.F., a resident of the Antioch Unified School
2 District, was entitled to a due process hearing on the
3 issues raised in his due process complaint. OAH
4 denied N.F. that right, dismissing his OAH complaint
5 based upon an incorrect interpretation of the law.
6 As a result, N.F. has had no IEP or FAPE offer from
7 AUSD and no determination as to AUSD's duty to N.F.
8 under IDEA and State law.

9 **SECOND CAUSE OF ACTION**

10 **For Payment of Reasonable Attorney's Fees and Costs.**

11 13. Plaintiff incorporates by reference each and
12 every allegation of Paragraphs 1 through 12 of the
13 Complaint as though fully set forth herein.

14 14. Plaintiff seeks reasonable attorney's fees
15 and costs in this matter, should the OAH Dismissal be
16 reversed and remanded for hearing.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff prays for judgment as
19 follows:

20 On Plaintiff's First Cause of Action:

21 That the Court Order the following:

- 22 1. Reverse the OAH Order Denying Motion for
23 Reconsideration and remand Plaintiff's
24 due process hearing and issues to OAH
25 for determination;

26 On Plaintiff's Second Cause of Action:

- 27 2. Award reasonable attorney's fees and costs
28 incurred by Plaintiff in connection with

1 his the underlying administrative due
2 process matter;

3 3. Make any order the Court finds appropriate
4 in this matter and under its authority.

5 Date: June 22, 2020

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7 By: /s/ Tania L. Whiteleather
8 TANIA L. WHITELEATHER
9 Attorney for Plaintiff
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